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Letter dated 2 January 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Luxembourg, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: French]

Letter dated 21 December 2001 from the Permanent Representative of Luxembourg to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit to you the report of the Grand Duchy of Luxembourg to the Committee established pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see attachment).

(*Signed*) Hubert **Wurth**

His Excellency Sir Jeremy Greenstock, KCMG
Chairman of the Security Council Committee concerning counter-terrorism

Report of the Grand Duchy of Luxembourg to the Committee established pursuant to paragraph 6 of Security Council resolution 1373 (2001)

As a member of the European Union, the Grand Duchy of Luxembourg fully associates itself with the actions taken by the Union under the Treaty on European Union and the Treaty establishing the European Economic Community. For the above-mentioned actions, it would be useful to refer to the report which the European Union has submitted to the Counter-Terrorism Committee on behalf of its 15 member States.

Therefore, this report will be limited to national legislation and actions taken by the Luxembourg authorities.

Paragraph 1

Subparagraph (a): *What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to (d)?*

At the present time, the law in Luxembourg does not expressly recognize offences related to the financing of terrorist acts.

On the other hand, such acts on the whole are likely to meet other conditions which, under Luxembourg law, defines them as criminal offences.

Accordingly, forming an association for the purpose of attacking persons or property is punishable by a prison term of 5 to 10 years, and all individuals assisting in the commission of such acts are punishable as either co-perpetrators or abettors of the offence (articles 66 to 69 and 322 of the Criminal Code).

It should be added that, following recent amendments to legislation, legal instruments for the suppression of criminal money-laundering have been made applicable to acts perpetrated by criminal organizations formed for the purpose of attacking persons and property.

Nevertheless, the question of introducing an offence specifically covering acts of terrorism will be reconsidered following the adoption by the members of the European Union of the framework decision on combating terrorism (see paragraph 3, subparagraph (d), below).

The Grand Ducal Police have also instituted a special unit to coordinate investigations. Its mission is to investigate all suspected acts of terrorism and financing of terrorism. It gathers and collates information on crime in general, monitoring of aliens, anti-money-laundering activities and criminal and financial analysis.

Subparagraph (b): *What are the offences and penalties in your country with respect to the activities listed in this subparagraph?*

On the subject of the introduction of criminal offences in combating the financing of terrorism, see the statements under paragraph 1, subparagraph (a) above, and paragraph 3, subparagraph (d), below.

Subparagraph (c): *What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.*

Under Luxembourg positive law, the seizure of property and assets used or intended for use in committing a crime is provided for under common criminal law.

These provisions have been made applicable to all types of funds and assets, of criminal origin or, to be used for criminal purposes in the context of combating money-laundering. They also apply to persons participating in attacks carried out by criminal organizations (see paragraph 1, subparagraph (a), above).

Furthermore, all professionals in the financial sector are required to cooperate with the authorities in this area, based in particular, on article 40 of the amended Act of 5 April 1993 concerning the financial sector.

Pursuant to this provision, banking establishments, life insurance companies, and all professionals in the financial sector are required to furnish, at the request of the authorities and on their own initiative, any information necessary to the prosecution of money-laundering offences. Furthermore, professionals in the financial sector must refrain from executing transactions which they know to be related to money-laundering before they have informed the Public Prosecutor, who may give instructions not to execute the operation.

It should be added that the attachment of seized funds and property can be ordered subsequently by the court with jurisdiction over the matter (article 32-1 of the Criminal Code).

As for specific measures in this area, it should be noted that the Luxembourg authorities are cooperating directly with the authorities of the United States of America, particularly the Federal Bureau of Investigation and the United States Treasury. Thus, the Luxembourg financial markets have been checked, in collaboration with professionals in that sector, to see whether the entities or individuals appearing on the lists transmitted by the United States possess any kind of assets in Luxembourg.

For further information, see the statements under paragraph 1, subparagraph (d), below.

Reference is also made to the report submitted by the European Union concerning the freezing of assets.

Subparagraph (d): *What measures exist to prohibit the activities listed in this subparagraph?*

Pursuant to the anti-money-laundering laws (see subparagraphs 1 (a) and (c) above), the Financial Sector Monitoring Committee (CSSF), the oversight body for all professionals in the financial sector pursuant to the amended Act of 5 April 1993 concerning the financial sector, has further intensified the search for funds linked to terrorism launched in 2000 on the basis of Council of the European Union Regulation No. 337/2000 of 14 February 2000 concerning, in particular, the decision to freeze funds and other financial resources in respect of the Taliban of Afghanistan in implementation of Security Council resolution 1267 (1999).

Financial agents were reminded that they are required to furnish all necessary information to ensure the implementation of Regulation No. 337/2000. It goes without saying that the same holds true for Council of the European Union Regulation No. 467/2001 of 6 March 2001, implementing Security Council resolution 1333 (2000) and repealing the aforementioned regulation, and for its five subsequent amendments.

Following the attacks of 11 September, CSSF once again reminded its agents that they should:

- Provide CSSF with any information which would facilitate the detection and freezing of assets of the persons and entities concerned;
- Cooperate with the Ministry of Foreign Affairs in carrying out any measures to implement the sanctions decided on by the Security Council;
- Check that they are not maintaining business relations of any kind with the persons or entities listed in the documents drawn up by the European Union or transmitted by the United States authorities under resolutions of the Security Council.

In accordance with these instructions, the relevant checks have been extended to all persons or entities suspected of being involved in those attacks, taking into account all available information, as well as requests for information based on lists of names communicated to CSSF by the Public Prosecutor.

All useful information collected during these checks that relates to doubtful operations has therefore been communicated immediately to the Public Prosecutor and to CSSF for transmission to the Ministry of Foreign Affairs of Luxembourg.

Paragraph 2

Subparagraph (a): *What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?*

For the penalties under Luxembourg law for the recruitment of members of terrorist groups, see the explanations provided under paragraph 1, subparagraph (a), above.

As for supplying terrorists with weapons, it should be stated that all the legal instruments established to combat money-laundering are equally applicable to offences against the legislation relating to weapons and ammunition, so that any acquisition, holding or sale of weapons and any kind of financial operation which could support the arming of terrorist organizations are currently punishable under Luxembourg law (cf. article 506-1 of the Criminal Code, as amended by the Act of 14 June 2001).

Subparagraph (b): *What other steps are being taken to prevent the commission of terrorist acts and, in particular, what early warning mechanisms exist to allow exchange of information with other States?*

At the international level, the Luxembourg authorities are cooperating with the authorities of other States within Interpol and Europol in order to facilitate the exchange of information relating to combating terrorism and, where necessary, alert the authorities of other States members of those organizations as soon as possible. At its meeting on 20 September 2001, the Council of the European Union decided to intensify this exchange of information. On this point, therefore, reference is made to the report transmitted to the Committee by the European Union.

Moreover, the Luxembourg police authorities are participating in and cooperating with an informal working group, the Working Group on Terrorism, which brings together representatives of the police authorities of States members of the European Union and those of several other European States.

At the national level, the Standing Committee on Security, composed of representatives of all the national authorities involved in counter-terrorism (prevention, suppression, protection of the civilian population, border control, health, etc.), provides a forum for the exchange of information and coordinates the measures decided upon at both the national and the international levels.

Subparagraph (c): *What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be helpful if States supplied examples of any relevant action taken.*

There is currently no specific provision under Luxembourg law for denying *expressis verbis* the status of refugee to an asylum seeker on the grounds that he is labelled a terrorist.

However, as requests for asylum are considered in Luxembourg in accordance with the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and approved by the Grand Duchy of Luxembourg by the Act of 20 May 1953, a terrorist may be excluded from the asylum procedure under article 1, paragraph F, of the Geneva Convention.

Similarly, a person linked to terrorist organizations may be removed or expelled on the basis of article 33, paragraph 2, of the same Convention.

To date, however the Luxembourg authorities have never been faced with a request for asylum which has given rise to the application of the legal provisions described above.

Subparagraph (d): *What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.*

For the measures that have been taken or are to be taken to prevent the territory of Luxembourg from being used to prepare for the commission of acts of terrorism, reference is made to the statements under paragraph 2, subparagraphs (a), (c) and (f).

Subparagraph (e): *What steps have been taken to establish terrorist attacks as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.*

With regard to the introduction of terrorist offences strictly speaking, reference is made to the explanations provided under paragraph 1, subparagraph (a), and paragraph 3, subparagraph (d).

Since Luxembourg has not yet been faced with the commission of a terrorist act in its territory, it is not possible to provide information on the sentences given.

Subparagraph (f): *What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.*

On the question of mutual assistance between States, reference is made to the statement under paragraph 2, subparagraph (b), above.

With regard to the transmission of evidence between States, it should be pointed out that this matter is currently governed in Luxembourg by the Act of 8 August 2000 on international mutual assistance in criminal matters, which is applicable to all requests from States which are not linked to Luxembourg by an international agreement on the subject or by international judicial authorities recognized by Luxembourg.

This Act also applies to requests for mutual assistance from States which are linked to the Grand Duchy of Luxembourg by an international agreement on the subject. In the event of a conflict, the provisions of the international agreement prevail.

The aforementioned Act was drafted with a view to simplifying and expediting the procedures, while removing abuses and delaying tactics. In this connection, article 7 of the Act provides that matters relating to mutual assistance in criminal matters should be treated as urgent and priority matters and that the requested authority should inform the requesting authority of the State of the procedure and of any delay.

From a practical standpoint, the provisions of this Act allow other States to transmit requests for mutual assistance to the Public Prosecutor of Luxembourg without having to go through the diplomatic channel. After having considered the request for assistance from every aspect within his competence, the Public Prosecutor transmits it to the judicial authorities for implementation if he deems that there is no reason to deny it.

The implementation of mutual assistance measures is the responsibility of the authority which would be competent if the offence had been committed in the Grand Duchy of Luxembourg, in other words, in principle, the examining magistrate.

In the event that there has been no appeal against the decision to grant mutual assistance or measures to implement such assistance, the Judges' Council Chamber of the Court of the district which is territorially competent will rule on the transmission of articles or documents which may have been seized on instructions from the Public Prosecutor, without any other formality.

After implementation, requests for mutual assistance are returned either through the official channel or directly.

Moreover, judicial cooperation between Luxembourg and the United States of America is currently governed by the bilateral Treaty on mutual legal assistance in criminal matters, signed at Luxembourg on 13 March 1997, together with the exchange of letters relating thereto.

This Treaty was approved and ratified by the Act of 23 November 2000 and entered into force between the two States on 1 February 2001.

Finally, it should be pointed out that Luxembourg has ratified the following treaties concerning mutual legal assistance in criminal matters:

- Convention concerning mutual assistance in criminal matters of 20 April 1959, drawn up by the Council of Europe, and the Protocol thereto signed at Strasbourg on 17 March 1978;
- Treaty concerning extradition and mutual assistance in criminal matters between Belgium, the Grand Duchy of Luxembourg and the Netherlands, of 27 June 1962;
- Convention Applying the Schengen Agreements of 14 June 1985, signed on 19 June 1990.

The Convention drawn up on 29 May 2000 by the European Union concerning mutual assistance in criminal matters and the Act of the Council of the European Union of 16 October 2001 establishing the protocol to that Convention are in the process of being approved and ratified by the Grand Duchy of Luxembourg.

Subparagraph (g): *How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery?*

Luxembourg is cooperating closely with the authorities of neighbouring countries in the control of land borders, in accordance with the Schengen Agreements, which bring together within the European Union Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden, as well as Norway and Iceland, as associated countries.

Measures have been taken with regard to equipment and personnel in order to put stronger controls into effect within 24 hours of an alert.

With regard to Luxembourg's only external border in relation to the territory of the States members of the Schengen space, namely Luxembourg airport, stronger controls were put into effect immediately following the events of 11 September 2001. The customs and police authorities are thus carrying out thorough manual and technical checks of passengers, baggage and air freight.

Paragraph 3

Subparagraph (a): *What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?*

With regard to intensifying and accelerating the exchange of operational information between States, reference is made to the statements under paragraph 2, subparagraph (b), above.

Subparagraph (b): *What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?*

As to the exchange of information between States at the administrative and judicial level, reference is made to the explanations provided under paragraph 2, subparagraphs (b) and (f), above.

Subparagraph (c): *What steps have been taken to cooperate in the areas indicated in this subparagraph?*

With regard to cooperation against terrorism in the framework of bilateral and multilateral arrangements, reference is made to the statements under paragraph 2, subparagraphs (b) and (f).

Subparagraph (d): *What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this paragraph?*

The International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly on 9 December 1999, was signed by the Grand Duchy of Luxembourg on 20 September 2001.

In accordance with the innovative approach adopted in this Convention, in which the idea of regulating issues on a case-by-case basis is abandoned in favour of a comprehensive approach to fighting terrorism, Luxembourg intends to introduce into its legal system a comprehensive and coherent set of legal measures relating to terrorism.

In this spirit, a preliminary draft bill approving the Convention of 9 December 1999 is intended to introduce the offence of financing terrorism into Luxembourg law. The draft bill also takes into account the conventions mentioned in the annex to this Convention that have already been ratified by the Grand Duchy of Luxembourg.

Nevertheless, this draft bill is still subject to amendment in accordance with the framework decision of the Council of the European Union concerning the fight against terrorism, which will be taken into account in its finalization.

With regard to the United Nations Convention against Transnational Organized Crime and its first two protocols, it should be noted that they were signed by the Grand Duchy of Luxembourg on 13 December 2000 and that the procedures for the approval of those instruments will commence upon the signing of the third Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

Moreover, the Grand Duchy of Luxembourg would like to take this opportunity to provide information on the status of signature of all 12 international conventions dealing with different aspects of terrorism.

With regard to the anti-terrorism conventions deposited with the Secretary-General of the United Nations, the status of signature is as follows:

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 14 December 1973): Luxembourg intends to accede to this convention.
- International Convention against the Taking of Hostages (New York, 17 December 1979): Luxembourg has signed and ratified this convention.
- International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997): Signed by Luxembourg on 6 February 1998; ratification in progress.

With regard to the anti-terrorism conventions deposited with other depositaries:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 14 September 1963): Luxembourg has signed and ratified this convention.
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 24 February 1988): Signed by Luxembourg on 18 May 1989; ratification in progress.
- Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970): Luxembourg has signed and ratified this convention.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971): Luxembourg has signed and ratified this convention.
- Convention on the Physical Protection of Nuclear Materials (Vienna, 3 March 1980): Luxembourg has signed and ratified this convention.

Furthermore, the Luxembourg authorities are currently considering the possibility of signing the following three conventions:

- Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988);
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988).

Subparagraph (e): *Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.*

With regard to the implementation of the anti-terrorism conventions, reference is made to the statements under paragraph 3, subparagraph (d).

Subparagraph (f): *What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status? Please supply examples of any relevant cases.*

At this point, the events of 11 September 2001 have not yet had a legislative impact on the procedures for handling applications for asylum.

Checks of persons who have lodged an application for asylum in Luxembourg are currently performed in accordance with article 6 of the Act of 3 April 1996 establishing procedures for the review of applications for asylum and a temporary protection regime, as amended by the Act of 27 March 2000.

Pursuant to this provision, the judicial police systematically take fingerprints and photographs of asylum seekers which are transmitted as needed to the competent authorities of the States members of the European Union, in the context of a request based on the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the member States of the European Union.

Moreover, the data provided by asylum seekers are checked and compared with information in the Schengen Information System database.

In order to be able to conduct further checks which may prove useful in the processing of applications, particularly in relation to statements made by asylum seekers during their hearings before the services handling applications for asylum, identity papers and all other documents relevant to the review of applications for asylum are retained by the Minister of Justice until the procedures have been completed.

Subparagraph (g): *What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.*

As stated under paragraph 2, subparagraph (c), and paragraph 3, subparagraph (f), above, applications for asylum in Luxembourg are handled in accordance with the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951, and with the Act of 3 April 1996 establishing procedures for the review of applications for asylum and a temporary protection regime, as further amended recently by the Act of 27 March 2000.

Pursuant to article 14 of this Act, refugee status may be withdrawn in the cases provided in article 1 (C) and (F) of the Geneva Convention and in cases where aliens deliberately supply false information or neglect to provide certain information which enabled them to be admitted to the Grand Duchy of Luxembourg with the status of refugees.

With regard to the relationship between the right of asylum and extradition, on the one hand, and the claim of political motives which asylum seekers may invoke in order to obtain the status of a political refugee or avoid extradition, it should be noted, first, that the extradition of a political refugee to a third country is not prohibited by the provisions of the 1951 Geneva Convention.

In addition, facts likely to lead to the extradition of such individuals are also, in principle, likely to justify the withdrawal of the status of a political refugee on the basis of article 1 (F) of the Geneva Convention; thus, there is no legal incompatibility between the right of asylum and the matter of extradition.

Nevertheless, as the very definition of a "terrorist act" may differ substantially from one State to the next, depending upon its socio-political perspective, Luxembourg prefers, under the current circumstances, to continue to conduct a concrete and detailed examination of the particulars of each case, taking into account, on a case-by-case basis, specific issues relating to the origin of asylum seekers and the requirements of fighting terrorism.

However, the right of asylum in Luxembourg could, in this specific regard, be modified once the current negotiations within the European Union concerning the Proposal for a Council Directive on minimum standards on procedures in member States for granting and withdrawing refugee status have concluded.

Moreover, the matter of extradition per se is currently governed in Luxembourg law by the Extradition Act of 20 June 2001.

Pursuant to the provisions of this Act, extradition will not be granted if the offence for which it is requested constitutes a political offence, an offence connected with a political offence or an offence inspired by political motives. Nevertheless, an attack against the life of a head of State or a member of his or her family or an offence connected with such an attack is not automatically regarded as a political offence.

The same Act further provides that this provision does not affect the obligations that the State of Luxembourg assumes or will assume under international agreements relating to extradition for the offences specified therein.

Thus, Luxembourg has ratified the European Convention on the Suppression of Terrorism, signed at Strasbourg on 27 January 1977, which provides that for the purposes of extradition between contracting States, a party may not regard as a political offence any of the terrorist acts defined by the Convention. It follows from this that Luxembourg law currently permits the extradition of a person who has committed terrorist acts.